IN THE HIGH COURT OF BOMBAY AT GOA
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FIRST APPEAL NO. 71 OF 2002

1. State of Goa,
   represented by
   Sp. Land Acquisition
   Officer (N), Mapusa,
   Goa, and

2. Executive Engineer,
   Works Division VIII,
   I.D. now G.T.I.D.C.,
   Sarvona, Bicholim, Goa. ... Appellants.

Versus

Smt. Kunda Jagannath
Sukhtankar, c/o Shri
Bhaskar L. Bhandari,
Vassant Bhavan,
Cumbharjua, Ilhas, Goa. ... Respondent.

Shri H. R. Bharne, Government Advocate for the appellants.

Shri V. K. Bodke, advocate for the respondent.

CORAM : S. A. BOBDE &.
N. A. BRITTO, JJ.

DATE : 14th July, 2004.

ORAL JUDGMENT (Per Britto,J.)

This Appeal is directed against the Judgment/Award dated 30th July, 2001, of the learned Additional District Judge, Panaji ("Reference Court" for short), in Land Acquisition Case No.208/98, by which the learned Reference Court has enhanced the compensation payable to the respondent from Rs.8/- per sq. mt. to Rs.24/- per sq. mt.

2. Briefly stated, by virtue of a Notification under Section 4(1) of the Land Acquisition Act, 1894, published in the Gazette dated 12th December, 1991, the Government acquired

about 91,990 sq. mts. of land for the purpose of construction of Left Bank Main Canal for Tillari Irrigation Project from 21.116 kms. to 22.537 kms. at Colvale and Tivim villages of Bardez Taluka.

3. In the said acquisition what was also involved is the property of the respondent admeasuring about 1,71,200 sq. mts. surveyed under no. 471 of Colvale village and out of which an area of 38,775 sq. mts. has been acquired.

4. The Land Acquisition Officer ("L.A.O." for short), by his Award dated 26th October, 1993, awarded to the respondent compensation at the rate of Rs.8/- per sq. mt. Being dis-satisfied with the said compensation, the respondent got a reference made to the District Court and claimed enhancement at the rate of Rs.100/- per sq. mt.

5. As already stated, the learned Reference Court enhanced the said compensation to Rs.24/- per sq. mt. and dis-satisfied with the same it is the Government which is now in appeal before this Court, against the same.

6. Before the Reference Court, the respondent had examined herself and had examined her expert, namely, A.W.2, Subhashchandra N. Bhobe. The respondent had also relied upon two sale deeds, the first dated 27th December, 1989 (Exh.A.W.1/A) and in support thereof the respondent had

examined A.W.3, Ashokkumar Nasnodkar; the second was dated 26th December, 1990 (Exh. A.W.1/B) and in support of the same the respondent had examined A.W.4, Tulshidas Gawande. The first sale deed was in respect of a plot of land admeasuring 500 sq. mts. which was sold at the rate of Rs 60/- per sq. mt. and this plot was situated at a distance of about 800 mts. from the acquired land of the respondent, but towards Colvale side. The second was also in respect of a plot admeasuring 500 sq. mts. which was sold at the rate of Rs.80/- per sq. mt. and this was situated at a distance of about 2 kms. from the acquired property. The sale deed of the plot Exh.A.W.1/A dated 27th December, 1989, was in the ward Condiwado, while the sale deed Exh.A.W.1/B dated 26th December, 1990, was at ward Khursawado, both wards being of the said Colvale village.

7. The learned Reference Court took the plot of the sale deed Exh. A.W.1/B dated 26th December, 1990, as a guide for the purpose of fixing the compensation payable to the respondent and after deducting 70% of the sale price of the said sale deed, came to the conclusion that Rs.24/- per sq. mt. was the compensation payable to the respondent.

8. At the hearing of the arguments, both the parties have referred to a number of decided cases and we would like to make a brief reference to some of them.

9. In the case of **Periyar and Pareekanni Rubbers Ltd. vs. State of Kerala** (1991)4 S.C.C. 195, the Supreme Court held that it is the paramount duty of the courts of facts to subject the evidence to close scrutiny, objectively assess the evidence tendered by the parties on proper considerations thereof in correct perspective to arrive at a reasonable market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands. The neighbourhood lands possessed of similar potentialities or same advantageous features or any advantageous special circumstances available in each case also are to be taken into account. Thus, the object of the assessment of the evidence is to arrive at a fair and reasonable market value of the lands and in that process sometimes trench on the border of the guess work, but mechanical assessment has to be eschewed. The Judges are to draw from their experience and the normal human conduct of parties in bona fide and genuine sale transactions is the guiding star in evaluating evidence. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would place heavy burden on the public exchequer to which everyone contributes by direct or indirect taxes.

10. In the case of **Land Acquisition Officer, Eluru & Ors. vs. Jasti Rohini (Smt.) & Anr.,** (1995)1 S.C.C. 717, the Supreme Court observed that in fixing the market value on the basis of its potentiality for use for building purposes,

it must be established by evidence aliunde that the potential purpose must exist as on the date of acquisition by other possible purchasers in the market conditions, prevailing as on the date of the notification. Existence of constructed house or construction activity in other similar lands in the locality for the purpose contended for or of purchase for such purposes as on the date of the proposed acquisition prima facie indicates that there is demand for and the possibility of the immediate user of the land and it is a reasonable possibility to infer that the acquired lands also are possessed of potential value.

11. In the case of **Shaji Kuriakose & Anr. vs. Indian Oil Corpn. Ltd. & Ors.,** (2001)7 S.C.C. 650, the Supreme Court observed that comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of Notification under Section 4 of the Act and there are certain factors which are required to be fulfilled and on fulfilment of those factors, the compensation can be awarded according to the value of the land reflected in the sales. The factors being inter alia, (1) that sale must be genuine transaction; (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act; (3) that the land covered by the sale must be in

the vicinity of the acquired land; (4) that the land covered by the sales must be similar to the acquired land; and (5) that the size of the plot of the land covered by the sales be comparable to the land acquired, and if all these factors are satisfied then, there is no reason why the sale value of the land covered by the sales be not given for the acquired land.

12. Admittedly, the land of the respondent was situated between two roads, namely abutting the Colvale-Tivim road on one side and at a distance of about 1 km. or so from the Mapusa-Colvale road on the other side and at a distance of about 1.4 kms. from Tar wado at Colvale where well-developed habitation was existing. As stated by A.W.2, Shri Bhobe, there was a regular bus transport running on the said two roads and there was electricity line passing along the roads and Colvale ferry point with shopping area and houses around was at a distance of about 1.9 kms. and besides the temple, the market, panchayat office, bank, post office, shops and hotel were also located at a distance of about 2.25 kms. on either side of the said property. It was also stated by A.W.2, Shri Bhobe, that there were scattered residential houses within a distance of about 200 mts. or so from the acquired land and the acquired land was fit for development and construction purposes and all types of construction was possible for residential purposes. It is, therefore, obvious that the land of the respondent could certainly be assessed as land having construction or development potential.

13. The said expert, namely A.W.2, Shri Bhobe, did value the respondent's land at the rate of Rs.56/- per sq. mt., but gave no reasons as to how he arrived at the said valuation. It is but obvious that the said opinion given by him fixing the compensation at Rs.56/- per sq. mt. is a mere ipse dixit and without assigning any reasons whatsoever and therefore, such an opinion cannot be accepted. It is well-settled that an opinion is worth the reasons given in support of the same.

14. Generally, a sale deed to be used as a guide to fix compensation payable has got to be proximate not only in terms of distance from the acquired land, but also proximate from the time of the date of the Notification under Section 4(1) of the Act. The learned Reference Court chose to rely on the second sale deed dated 26th December, 1990 at Exh. A.W.1/B. The plot of the sale deed was situated at a distance of about 2 kms. near a place where there is a Binani factory, which place is otherwise closer to Mapusa town than to Colvale or Tivim. When a choice was available to the Reference Court in choosing two sale deeds, one which was closer in terms of distance than the other which was closer in terms of time, in our opinion, the learned Reference Court ought to have chosen the sale deed which was closer in terms of distance, namely, the sale deed dated 27th December, 1989 by which 500 sq. mts. were sold at the rate of Rs.60/- per sq. mt.

15. The appellants contended that the respondent's property was classified as partly orchard and partly cultivated land in the original plan and, therefore, the same could not be compared with either of the two plots of the sale deeds which fell in settlement zone. In fact, the appellant had examined their Senior Town Planner, Shri Godinho (R.W.2) to support their contention that both the plots of the said two sale deeds which were having survey no.45/3 and 256/15 were located in settlement zone. Likewise, the appellants had also examined their Assistant Engineer, Shri M. K. Shrikant, (R.W.3), to show that the respondent's property surveyed under no. 427 fell in orchard and cultivated zone. Shri Bharne, the learned Government Advocate, therefore submitted that the respondent's property having been classified as orchard and cultivable zone in the original plan could not be compared with any of the plots of the sale deeds. On this aspect, the said Shri Shrikant (R.W.3) had stated that the original plan was published somewhere in the year 1981 and had conceded that there were changes in the original plan from time-to-time for changing one zone to another and these changes were made very often. Shri Shrikant had also conceded that if a party approached the Government for changing the said orchard zone into a settlement zone, the same could be done by approaching the Town and Country Planning Board. However, Shri Bharne, fairly conceded that the fact that the respondent's property was classified as orchard and cultivable zone, will not be an impediment which will come in the way of its being used for

construction purposes, but will be one of the disadvantages the said property has as compared to the properties situated in a settlement zone. We are in agreement with the said submission, since in terms of Section 17 of the Town and Country Planning Act, a revision of the original plan is always possible and permissible.

16. Shri Bharne has next submitted that the learned Reference Court did not take any deduction towards the largeness of the area and in support of this submission Shri Bharne placed reliance on the case of **Land Acquisition Officer & Sub-Collector, Gadwal vs. Sreelatha Bhoopal (Smt.) & Anr.,** (1997)9 S.C.C. 628, wherein the Supreme Court has observed that it is a well-settled legal position that the Court has to put itself in the armchair of a prudent purchaser and put the question to itself whether the land, in the given circumstances would fetch the same market value as is likely to be determined by the Court when small pieces of land would be offered for sale. In this context, reference could also be made to the case of **Bhagwathula Samanna & Ors. vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality,** AIR 1992 SC 2298, wherein the Surpeme Court has again observed that the transaction in regard to similar property cannot, therefore, be taken as a real basis for fixing the compensation for larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction

is given taking into consideration the expenses required for development of larger tracts of property to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. (emphasis ours)

17. Shri Bharne, learned Government Advocate, has also contended that the respondent's property was situated in such a locality that there were no signs of any development in that place and in this context Shri Bharne has placed reliance on the case of **State of Maharashtra & Ors.vs. Digamber Bhimashankar Tandale & Ors.,** (1996)2 S.C.C. 583. In this case, agricultural lands were situated within the municipal limits and the lands so situated were converted for non-agricultural purposes and since there was no development in that area, the Hon'ble Supreme Court held that there was no potential value for the land. Again, in a similar situation, in the case of **Land Acquisition Officer, Hyderabad & Ors. vs. Male Pullamma & Ors.,** (1996)8 S.C.C. 247, the lands acquired were agricultural lands and part of the land was used for poultry purposes and the Hon'ble Supreme Court found that there was no development in the area or in the neighbourhood as on the date of the Notification, and, therefore, held that the acquired land would not be valued as land possessing a potential value. In our opinion, the observations of the Supreme Court in the aforesaid two cases were made on the fact situation of the said cases and cannot be imported and applied to the facts of the case at hand.

18. We have already indicated that in this case the sale deed dated 27th December, 1989, (Exh.A.W.1/A) could be used as guide for the purpose of fixing the market value of the acquired land. It also may be noted that the L.A.O. had taken note of about nine sale instances which had taken place in the village of Colvale between 1989 to 1991. The sale deed dated 26th December, 1990, (Exh.A.W.1/B), is also an indication that the land in the village was in demand. We have already indicated that the acquired land though vast in area was abutting the said Colvale-Tivim road on one side and was otherwise situated at a distance of about 1.4 kms. from the busy locality or the settlement area of Colvale village. We have also noticed that there were scattered houses in and around the acquired property and within a distance of 200 mts. or so. The very fact that the acquired property was situated between two vital State roads and not very far from the said busy locality of Colvale, the acquired property in our view, had potential, for development. It had to be noted that with the recent trend in urbanisation Mapusa town has now extended into Colvale where the said Binani factory is situated. Judicial notice could be taken of this position.

19. Shri Bharne has placed reliance on the case of **State of Haryana & Anr. vs. Joginder Singh,** (1997)3 S.C.C.628 and has submitted that the Court is not required to take into account the possibility of future development.

20. On the other hand, Shri Bodke has placed reliance on the case of **Hasanali Walimchand (dead) by L.Rs. vs. State of Maharashtra,** 1998 AIR SCW 387 and submitted that future potential on account of its location can be taken into account.

21. We also find an observation made by the Supreme Court in the case of **Land Acquisition Officer vs. Jasti Rohini** (supra) that future suitability or adaptability should not be taken into account. However, in the case of **P. Ram Reddy & Ors. vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad & Ors.,** (1995) 2 S.C.C. 305, what the Supreme Court has indicated is that the land should be capable of being put to better use in the immediate or near future. In our opinion, considering the location of the acquired land in relation to the said villages and the roads, the acquired land did have potential for development in the near future. In other words, the future potentiality has got to be of the near or foreseeable future and not of remote or distant future.

22. Admittedly, the plot of sale deed dated 27th December, 1989 (A.W.1/A) is of a small plot admeasuring 500 sq. mts. which was sold at the rate of Rs.60/- per sq. mt. The acquired property as well as the said plot of the sale deed were both suitable for construction activity. One of the advantages which the plot of sale deed Exh.A.W.1/A had was

that it was located in a settlement zone whereas the acquired property was not. Likewise the plot of sale deed was closer to the existing settlement of the village, while the acquired property was further from it. Moreover, the acquired property was a very large property, almost 77 times larger than the plot of sale deed dated 27th December, 1989, (Exh.A.W.1/A). It would have certainly taken sometime for the development from Colvale village proper to reach the place where the acquired property was situated. The plot of the sale deed was also a near sub-divided plot, the property of which it was a part having been converted into four plots, while the acquired property was totally undeveloped land. Considering the said disadvantages which the acquired property had in relation to the plot of the sale deed dated 27th December, 1989, in our opinion, a deduction of 80% would be justified in fixing the compensation payable to the respondent on account of the present acquisition. When the said deduction is taken it works out to Rs.12/- per sq. mt. To that 10% increase in terms of price could be given considering that the sale deed Exh.A.W.1/A was about two years prior to the date of Notification under Section 4(1) of the Act. That works out to an increase of Rs.2.40 per sq. mt. In our opinion, therefore, compensation payable to the respondent would work out to Rs.14.40 per sq. mt.

23. As a result of the above discussion, we allow the appeal partly and set aside the impugned Judgment and

Award of the learned Reference Court and fix the compensation payable to the respondent at the rate of Rs.14.40 per sq. mt. Considering the facts, the parties are left to bear their own costs. The Judgment/Order of the learned Reference Court shall stand modified accordingly, with all consequential statutory benefits.

S.A. BOBDE, J.

N.A. BRITTO, J.

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